

DEPARTMENT OF DEFENSE



*Civilian Personnel Management Service*

# Furlough 2008 Questions and Answers

# Table of Contents

<b>REFERENCES .....</b>	<b>3</b>
<b>INTRODUCTION .....</b>	<b>3</b>
<b>FURLOUGH – GENERAL ADMINISTRATION .....</b>	<b>3</b>
<b>LEAVE .....</b>	<b>5</b>
<b>PAY .....</b>	<b>6</b>
<b>BENEFITS .....</b>	<b>6</b>
<b>UNEMPLOYMENT COMPENSATION .....</b>	<b>10</b>
<b>INJURY COMPENSATION .....</b>	<b>13</b>
<b>5 U.S.C.8118. ....</b>	<b>14</b>
<b>PRIORITY PLACEMENT PROGRAM (PPP).....</b>	<b>14</b>
<b>EMPLOYEE RELATIONS.....</b>	<b>16</b>
<b>LABOR RELATIONS .....</b>	<b>19</b>

## **QUESTIONS AND ANSWERS ON FURLOUGHS**

### **REFERENCES**

1. Office of Personnel Management (OPM) *Guidance and Information on Furloughs*
2. Deputy Secretary of Defense Memorandum, *Guidance for Continuing of Operations in the Absence of Available Appropriations*, June, 2008
3. Deputy Assistant Secretary of Defense (Civilian Personnel Policy) Memorandum, *Furlough Guidance*, December, 2007

### **INTRODUCTION**

These questions and answers augment those provided in the Office of Personnel Management's *Guidance and Information on Furloughs*, which can be found at: <http://www.opm.gov/furlough/furlough.asp>. The Department of Defense Appropriations Act, 2008, did not provide additional funds to the Department for the Global War on Terror (GWOT). Consequently, the Department has been forced to use its base operations and maintenance (O&M) funds to cover these war-related costs. As a result, a furlough of some civilian employees, paid from O&M accounts may occur. The questions and answers are specific to the issues raised by this furlough and may not necessarily be the same for any future furloughs. If you have additional questions send them to [cpmsnote@cpms.osd.mil](mailto:cpmsnote@cpms.osd.mil).

### **FURLOUGH – GENERAL ADMINISTRATION**

#### **1. What is a furlough?**

A furlough places employees in a temporary nonduty, nonpay status because of lack of work, funds, or other nondisciplinary reasons.

#### **2. Under what authority is a furlough taken?**

There are three legal authorities under which a furlough can be taken. Furloughs of 30 calendar days or less are covered under adverse action procedures found in Subpart D of 5 CFR 752. Furloughs of more than 30 calendar days are covered under reduction in force procedures found in Subpart B of 5 CFR 351 and Subchapter 1960.6 of the NSPS Implementing Issuances. Furloughs for Senior Executive Service members are covered Subpart H of 5 CFR Part 359.

### **3. How is time on a furlough documented?**

An SF-50, "Notification of Personnel Action," must be prepared for each individual subject to furlough. A furlough of 30 calendar days or less is processed using Nature of Action 472 and Legal Authority Code VAJ (5 U.S.C. 75). A return-to-duty SF-50 will also be necessary (Chapters 15 and 16 of [The Guide to Processing Personnel Actions](#) (GPPA)).

### **4. What effect will a furlough have on the calculation of a non-NSPS employee's creditable service?**

Time spent in a nonpay status (including furlough) is credited as follows:

- **Career tenure:** The first 30 calendar days of each nonpay period is creditable service. (5 CFR 315.201(b)(4)(ii)(A))
- **Probationary period:** An aggregate of 22 workdays in a nonpay status is creditable service. (5 CFR 315.802(c))
- **Qualification standards:** There is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform. (5 CFR 335.103(b)(3), OPM Qualification Standards, General Policies and Instructions, part E.3.(f))
- **Time-in-Grade:** Nonpay status is creditable service. (5 CFR 300.605(a))
- **Service Computation Date-LEAVE:** Up to 6 months in nonpay status is creditable. (5 USC 6303(a))

### **5. What effect will a furlough have on the calculation of an NSPS employee's creditable service?**

Time spent in a nonpay status (including furlough) is credited as follows:

- **Career tenure:** Not applicable under NSPS. (SC1950.5.1.)

- **Probationary period:** Time in a nonpay status in excess of 1 workday during the initial probationary period extends the probationary period by that amount of time. (SC1950.5.2.2.1.)
- **Qualification standards:** There is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform. (SC1950.5.3., OPM Qualification Standards, General Policies and Instructions, part E.3.(f))
- **Time-in-Grade:** Not applicable under NSPS. (SC1950.5.3.1.1.)
- **Service Computation Date-LEAVE:** Up to 6 months in nonpay status is creditable. (5 USC 6303(a))

#### **6. What effect does a furlough have on time limited appointments or promotions?**

Furloughs do not extend the not-to-exceed date of time limited appointments or promotions. Agencies have the option to separate temporary employees rather than including them in the furlough.

#### **7. What happens to non-NSPS time limited appointments that expired during a furlough?**

Furloughs do not extend the time limits for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. If you intend to extend the time limited appointment, it may be extended prior to the furlough or, the individual may be reappointed after the furlough in accordance with 5 CFR 316.401(c) or 5 CFR 316.302(b) (7).

#### **8. What happens to NSPS time limited appointments that expired during a furlough?**

Furloughs do not extend the time limits for temporary (SC1950.6.5.2.2.1.) and term (SC1950.6.5.2.1.1.) appointments. If you intend to extend the time limited appointment, it may be extended prior to the furlough or, the individual may be reappointed after the furlough in accordance with SC1950.6.5.2.2.4.7 or SC1950.6.5.2.1.4.7.

### **LEAVE**

**9. If an employee who received a furlough notice had previously scheduled annual or sick leave, what happens to the scheduled leave?**

Upon furlough, all scheduled leave is canceled (annual leave, sick leave, or other). Absences during the furlough may not be charged to leave.

**10. May employees who were designated as excepted from the furlough be granted paid leave?**

No. If an excepted employee is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities the employee must be furloughed. An agency may subsequently terminate the furlough if the employee's services are still required for excepted activities following the absence.

**11. If an employee who would be furloughed is on approved leave without pay (LWOP) must the LWOP be terminated and the employee furloughed?**

No. The status of employees in LWOP is not disturbed unless there is indication that the employee may return from the LWOP during the furlough.

**PAY**

**12. How is an employee treated who performs National Guard or Reserve duty while furloughed? Is it a dual compensation situation?**

It is not a dual compensation situation because furloughed employees are not in a pay status. They will be compensated by the military and continued to be carried in a LWOP-US status.

**BENEFITS**

**Federal Employees Health Benefits (FEHB)**

**13. To what extent does non-pay status affect Federal Employee Health Benefits (FEHB) coverage?**

FEHB enrollment continues for no more than 365 days in a non-pay status. The non-pay status may be continuous or broken by periods of less than 4 consecutive

months in a pay status. The Government contribution continues while employees are in a non-pay status. The employee can choose between paying the agency directly on a current basis while in a non-pay status or having the premiums accumulate and be withheld from his or her pay upon returning to duty.

**14. If an employee chooses to repay health benefit premiums on a bi-weekly basis while in a non-pay status, where should he/she send the payments?**

Bi-weekly payments must be sent to the DFAS Disbursement Center at the following address:

DFAS-Cleveland  
P.O. Box 99559  
Cleveland, Ohio 44199

Checks should be made payable to DSSN-8522-DFAS Cleveland.

*Note: If an employee chooses to pay premiums bi-weekly, the employee must continue to send payments for each pay period while in a non-pay status. The following information must be submitted along with the payment to ensure employee's account is properly credited:*

- *Your Social security number*
- *A statement that the payment is for FEHB and the pay period effective date*
- *Your servicing Payroll Office Number (can be found on your Leave and Earnings Statement)*

*Employees are encouraged to maintain proof of payment. Examples of proof of payment include cancelled checks and bank statements.*

**15. What happens if I choose to cancel my Federal Employee Health Benefits coverage while in a non-pay status in order to avoid the expense?**

Employees who cancel FEHB coverage to avoid payment of premiums while in a non-pay or reduced status do not have to wait for an FEHB open season to re-enroll. Cancellation of FEHB coverage will not affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

**16. Will an employee continue to be covered under the FEHB program if the agency is unable to make its premium payments on time?**

Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

### **Federal Employees Group Life Insurance (FEGLI)**

#### **17. To what extent does non-pay status affect Federal Employees Group Live Insurance coverage?**

Life insurance coverage continues for 12 consecutive months while in a non-pay status without cost to the employee or the agency. The non-pay status may be continuous or it may be broken by a return to duty for periods of less than 4 consecutive months.

### **Thrift Savings Plan (TSP)**

#### **18. To what extent does non-pay status affect Thrift Savings Plan (TSP) coverage?**

Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Thrift Savings Plan (TSP) premium(s). Employees cannot contribute to their TSP account while on furlough. Employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The fact sheet can be found at <http://www.tsp.gov/forms/oc95-4w.pdf>.

#### **19. Can I obtain a loan from my TSP account while in a non-pay status?**

Employees may not obtain a loan from their TSP account while on furlough. For employees with existing TSP Loans, the Internal Revenue Service (IRS) allows your TSP loan payments to be suspended for up to one year of the non-pay period. Interest will accrue while payments are suspended. Employees can make direct payments on their loan from their personal funds while on furlough. For more information on TSP Loans, employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation.

### **Flexible Spending Account (FSA)**

#### **20. To what extent does non-pay status affect Flexible Spending Account (FSA) coverage?**



Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Flexible Spending Account (FSA) premium(s). If the employee is in a non-pay status and has not pre-paid the FSA allotment, their FSA account will be frozen and the employee will not be eligible for reimbursement of any health care expenses incurred during that period until he/she returns to a pay status and allotments are successfully restarted. However, if the employee has a Dependent Care Flexible Spending Account (DCFSA), dependent care expenses incurred during the period in a non-pay status which meet IRS guidelines for eligible expenses (i.e., the employee must incur the expenses in order to allow the employee and his/her spouse to work or attend school) may be reimbursed up to the FSA account balance. When the employee returns to a pay status, allotments will be recalculated based on the number of pay dates remaining in the Benefit Period.

If the employee prepays his/her premiums by accelerating allotments prior to being placed in a non-pay status, allowable health care expenses incurred during the period in a non-pay status will be eligible for reimbursement. Visit the TSP website, [www.fsafeds.com](http://www.fsafeds.com) for more information.

### **Long Term Care (LTC)**

#### **21. To what extent does non-pay status affect Long Term Care (LTC) coverage?**

Deductions cease when in the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue Long Term Care (LTC) coverage, the employee must make payments while in a non-pay status. Visit the LTC website, <https://www.ltcfeds.com/documents> for more information.

### **Federal Employees Dental and Vision Insurance Plan (FEDVIP)**

#### **22. To what extent does non-pay status affect Federal Employees Dental and Vision Insurance Plan (FEDVIP) coverage?**

Deductions cease when in the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue FEDVIP coverage, the employee must make payments while in a non-pay status.

Visit the FEDVIP website, <http://www.opm.gov/insure/DentalVision> for more information.

### **Retirement Coverage**

#### **23. To what extent does non-pay status affect retirement coverage?**

Retirement coverage continues for up to 6 months for periods of non-pay status per calendar year.

### **UNEMPLOYMENT COMPENSATION**

#### **24. Are Human Resources Offices required to provide furloughed Federal employees with an SF-8, Notice to Federal Employee About Unemployment Insurance?**

Federal agencies are required to provide employees with an SF-8 if they will be in a non-duty status for seven or more days. For this reason, the SF-8 should be distributed to furloughed employees, since it is not known how long the furlough will last.

#### **25. What address should be provided on the SF-8? What is the Federal Identification Code (FIC)?**

The address on the SF-8 should be the address for the CPO or HRO. The FIC is 421 for DoD agencies, 422 for DA, 423 for DON and 424 for USAF.

#### **26. Are furloughed employees stationed overseas eligible to file for Unemployment Compensation (UC) benefits?**

Overseas employees are not eligible to file for UC benefits unless they return to the United States. Their UC claim would then be based on their state of residence.

#### **27. Could an overseas employee file a retroactive claim when they return to the U.S. at the end of their tour of duty in two years?**

No. None of the State Employment Security Agencies (SESA) would backdate a claim two years. If an UC claim was filed at that time, the claim would be effective when it was filed and not retroactive to the time of the furlough.

**28. Can excepted employees file a UC claim, since they are not getting paid?**

No. Excepted employees cannot file a UC claim, since they are not unemployed. In addition, in order to receive UC benefits, you must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

**29. Is the UC claim based on the state where you live, or where you work?**

UC claims are based on the state in which the work was performed (this does not include overseas employees).

**30. I heard that employees who are lower than a Grade 9 Step 5, or lower than a YB-2 in NSPS, would not be required to pay back UC benefits if they are later paid for the furlough period. Is this correct?**

No. The decision on whether or not employees would have to pay back UC benefits would be decided by each SESA based on their UC law. Overpayment requirements apply to all employees for a particular state, regardless of their grade or salary.

**31. Is information available as to what the states require before processing a claim for unemployment because of a furlough?**

Yes. The list below gives Web sites or instructions for each state when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at <http://www.oet.ky.gov/des/ui/staterefguide.asp> - that lists state Web sites, plus telephone numbers, for about 40 states.

**Alabama** – <http://dir.alabama.gov/uc/Claims/default.aspx>

**Alaska** – [http://www.labor.state.ak.us/esd\\_unemployment\\_insurance/biff-splash.htm](http://www.labor.state.ak.us/esd_unemployment_insurance/biff-splash.htm)

**Arizona** – <https://www.azdes.gov/esa/pdf/UIB-1015APAMNA.pdf>

**Arkansas** – [http://www.accessarkansas.org/esd/WorkersUnempBenefits/pdf/PDF501\\_BLANK.pdf](http://www.accessarkansas.org/esd/WorkersUnempBenefits/pdf/PDF501_BLANK.pdf)

**California** – <https://eapply4ui.edd.ca.gov/>

**Colorado** –

<https://www.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e>

**Connecticut** – <https://iic.ctdol.state.ct.us/>

**Delaware** – file through personal application only. Information is at [http://www.delawareworks.com/Unemployment/forms/ui\\_guide-ver0307.pdf](http://www.delawareworks.com/Unemployment/forms/ui_guide-ver0307.pdf)

**District of Columbia** – <https://does.dcnetworks.org/InitialClaims/>

**Florida** – <https://www2.myflorida.com/apps/uc/fluid/>

**Georgia** – [http://www.dol.state.ga.us/js/unemployment\\_benefits\\_individuals.htm](http://www.dol.state.ga.us/js/unemployment_benefits_individuals.htm)

**Hawaii** – file by phone only, by calling 808 643-5555. Information is at [http://hawaii.gov/labor/ui/pdf/STEP-BY-STEPS/claimant\\_process.pdf](http://hawaii.gov/labor/ui/pdf/STEP-BY-STEPS/claimant_process.pdf)

**Idaho** – <http://cl.idaho.gov/IW/UIClaim/Main.asp?strMenu=FILECLAIM>

**Illinois** – <http://www.ides.state.il.us/individual/certify/default.asp>

**Indiana** – <https://uplink.in.gov/CSS>

**Iowa** – <http://www.iowaworkforce.org/ui/file1.htm#1>.

**Kansas** – <https://www.uibenefits.dol.ks.gov/default.asp>

**Kentucky** – <http://www.kewes.ky.gov/>

**Louisiana** – <https://laors.laworks.net/laclaims/website/>

**Maine** – <https://portalxw.bisoex.state.me.us/mics/>

**Maryland** – electronic filing not permitted if employee worked for the Federal government in the past 18 months. File by phone at 410 949-0022 in the Baltimore area, or 1 800 827-4839 outside the Baltimore area. Information is at <http://www.dllr.state.md.us/employment/ui/index.html>

**Massachusetts** – initial claim by phone or in person only. File by phone at 1 877 626-6800 from Massachusetts, 617 626-6800 outside Massachusetts. Information is at <http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd>

**Michigan** – <http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html>

**Minnesota** – <http://www.uimn.org/ui/webclaim.htm>

**Mississippi** –

[http://mdes.ms.gov/wps/PA\\_1\\_0\\_CH/docs/UnemploymentInsurance/UI-501.pdf](http://mdes.ms.gov/wps/PA_1_0_CH/docs/UnemploymentInsurance/UI-501.pdf) - form must then be brought in person to a Mississippi Job Center

**Missouri** – <https://www.ui.dolir.mo.gov/som/>

**Montana** – <https://app.mt.gov/ui4u/index>

**Nebraska** – <https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp>

**Nevada** – [http://www.ui.nvdetr.org/UI\\_Agreement.html](http://www.ui.nvdetr.org/UI_Agreement.html)

**New Hampshire** – <https://claims.nhes.state.nh.us/weblogic/Welcome>

**New Jersey** – <https://wnjpin.state.nj.us/cont/index.html>

**New Mexico** – <http://www.dws.state.nm.us/>

**New York** – [https://ui.labor.state.ny.us/UBC/home.do?FF\\_LOCALE=1](https://ui.labor.state.ny.us/UBC/home.do?FF_LOCALE=1)

**North Carolina** –

<https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp>

**North Dakota** – <https://secure.apps.state.nd.us/jsnd/uiiaclaims/login.htm>  
**Ohio** – <http://unemployment.ohio.gov/>  
**Oklahoma** – <https://unemployment.state.ok.us/instructions.asp?x=n>  
**Oregon** –  
<https://ssl6.emp.state.or.us/ocs4/ic/begin.cfm?u=20071204A073631B24227692.2816&lang=E>  
**Pennsylvania** – <https://www.paclaims.state.pa.us/UCEN/>  
**Puerto Rico** – file by phone only, by calling 1-888-238-8889  
**Rhode Island** – <https://uiclaims.state.ri.us/RI-ICS/Intro/index.aspx?AC=yes>  
**South Carolina** – <http://www.sces.org/ui/claimant/index.htm>  
**South Dakota** –  
<https://www.state.sd.us/Applications/LD70UIbp/Secure/LD70initialClaims/MainI/CI.asp>  
**Tennessee** – <https://www.tennesseeanytime.org/labor/uiib/index.html>  
**Texas** – <http://www.twc.state.tx.us/ui/uicclaim.html>  
**Utah** – <http://jobs.utah.gov/ui/WebInitialCubs/Welcome.aspx>  
**Vermont** – file by phone only, by calling 1-877-214-3330. Information is at  
<http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx>  
**Virginia** – <http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm>  
**Virgin Islands** – file in person only. Contact information is listed at  
<http://www.vidol.gov/OP/Contact.htm>  
**Washington** – [http://www.wa.gov/esd/ui/icapp/\\_starticappen.htm](http://www.wa.gov/esd/ui/icapp/_starticappen.htm)  
**West Virginia** – <http://www.wvuc.org/>  
**Wisconsin** – <https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp>  
**Wyoming** – <http://wyui.doe.state.wy.us/>

## **INJURY COMPENSATION**

**32. If an employee was in receipt of FECA wage-loss compensation and was then furloughed, what effect would the furlough have on his/her compensation?**

None. FECA wage-loss compensation is not considered wages and, therefore, is not affected by a lack of funding at the employing agency.

**33. If an employee sustains a traumatic injury at work and begins to receive continuation of pay (COP) what happens to the COP when he is furloughed?**

When employees are furloughed due to a lapse in appropriations, there is no legal authority to pay COP or any similar payment. However, lapsed appropriations do

not abrogate the employee's entitlement to COP in any way. Therefore, although COP may be suspended during a furlough caused by lapsed appropriations, retroactive payment is mandatory once funding has been appropriated. Once the furlough begins, COP is placed in abeyance pending the resumption of funding. When funding is available any remaining COP entitlement must be paid on a retroactive basis. The Department of Labor recognizes that they cannot force an agency to make payments of salary to furloughed employees when the agency has no funds to legally do so. If Congress does not decide to pay furloughed employees for the days off, COP would still have to be paid retroactively under 5 U.S.C.8118.

### **PRIORITY PLACEMENT PROGRAM (PPP)**

**34. Does the moratorium in CPM Subchapter 1701.3, which prohibits issuing termination notices or effecting terminations between December 15 and January 3 apply to furloughs?**

No.

**35. Do we have to continue matching vacancies during furlough if we have no one in the office to download resumes through the Automated Stopper and Referral System (ASARS)? Can we continue recruiting?**

If recruitment continues during the furlough period, you are still obligated to fulfill all PPP requirements.

**36. We have a Priority Placement Program (PPP) registrant who was selected, had an established entrance on duty (EOD) date, and the gaining activity says there is no one there to process the registrant. Can the EOD date be delayed?**

Yes, but the gaining activity should first try to arrange for courtesy processing by another human resources office. If a delayed EOD would cause the registrant to suffer a break in service, the gaining activity must make arrangements for processing the registrant. In these cases, the Component PPP Coordinator may need to be involved.

**37. We have a PPP registrant who was selected and has an established EOD date. The gaining activity says the employee will be furloughed upon EOD. The PPP registrant is in a duty status at the losing activity. Can the losing and gaining activity agree to delay the EOD date?**

Yes. However, the registrant's separation date should be taken into account. If he or she is scheduled to be separated prior to the end of the furlough period, the registrant must be allowed to choose between delaying the EOD and being processed on the gaining activity's rolls and immediately placed on furlough.

**38. Can an employee (PPP registrant) immediately go into an annual leave status upon arrival at the new activity to preclude furlough?**

No. Employees placed through PPP are covered by the same rules as other employees. Registering and gaining activities may agree to delay the EOD date.

**39. A PPP registrant will be reporting to an activity (in a work status) during the furlough period. The gaining activity has been instructed that the tour of duty cannot include an Alternate Work Schedule (AWS) until after the furlough period. The employee's PPP offer had an AWS? Is the offer still valid?**

Yes

**40. A gaining activity has not been able to contact a registering activity either through fax, telephone, or e-mail. May it disregard the match and move on to another PPP registrant?**

No. If all efforts to contact the registering activity fail, the gaining activity should seek assistance from its CARE Program Coordinator.

**41. The registering activity cannot get in contact with a furloughed PPP registrant to make a job offer. The gaining activity wants the registering activity to consider this a declination. Can they?**

No. The registering activity must make a concerted effort to contact the registrant, up to and including certified mail with a return receipt.

**42. Can we continue to conduct PPP business such as submitting registrations and requisitions and downloading resumes?**

Yes. The Automated Stopper and Referral System (ASARS) will continue to process transactions in accordance with standard procedures.

**43. If a registering activity is unable to reach a registrant immediately, when does the job offer response time begin (i.e., 2 days for CONUS registrants and 3 days for OCONUS registrants)?**

As always, the response period does not begin until the registering activity establishes contact with the registrant and actually extends the job offer. Call the appropriate CARE Program Coordinator for guidance in problem cases.

**44. Will 30-day notices continue to be mailed out for Military Spouse Preference Program (Program S) registrants due to drop from the program (i.e., unless extended by the registering activity)?**

Yes.

**45. Our activity is on furlough and we will be unable to retrieve matches for active requisitions or our daily report. Will they remain in the system until our return?**

Yes, we will make whatever adjustments are necessary to ensure the data is available at the end of the furlough period.

**46. Are furloughed employees eligible to register in the PPP?**

Employees are not eligible to register in the PPP on the basis of furlough alone unless the furlough period is 6 months or longer. However, if they are eligible based on some other qualifying event such as RIF, declination of transfer of function, completion of an overseas tour, etc., they may register in accordance with the timelines of that event.

## **EMPLOYEE RELATIONS**

**47. What information should be included in the notice of decision when no advance notice is issued?**

The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. If some employees in a competitive level will not be furloughed because they are performing one of the excepted activities, we recommend a statement such as the following:

*If employees are being retained in your competitive level, they are required for orderly suspension of agency operations, or they are performing one of the excepted activities defined by the.*

There are other reasons an employee may not be furloughed. The notice must include a statement of applicable appeal and grievance rights. You are reminded that adverse action coverage for excepted service employees



was substantially expanded by the Civil Service Due Process Amendments of 1990 (P.L. 101-376). If a copy of the Merit Systems Protection Board appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form.

**48. What procedural rights would apply for a furlough of 30 calendar days or less for employees covered under 5 CFR Part 752?**

For a short furlough of a covered employee, the law (5 U.S.C. 7513) gives a covered employee the following rights:

- At least 30 calendar days advance written notice by the agency stating the specific reasons for the proposed action. (Typically, the reasons for the action would involve a lack of work or funds.) The 30 calendar day period begins upon an employee's *receipt* of the written notice. Therefore, agencies should plan accordingly to allow time for mailing the notice when hand-delivery is not possible.
- At least seven calendar days for the employee to answer orally and in writing to the proposal notice and to furnish documentary evidence in support of his or her answer. (A summary of any oral answer must be made and maintained by the agency.)
- The right of the employee to be represented by an attorney or other representative.
- A written decision by the agency with the specific reasons for its action at the earliest time practicable.
- The right to appeal the agency's action to the Merit Systems Protection Board.

In addition, the regulations (5 CFR 752.404) require that the agency inform the employee of the right to review the material it relied on to support the reasons for its action. The agency must designate an oral reply official who can either make or recommend a decision, and must issue its decision at or before the effective date of the action. The regulations (5 CFR 752.405) also provide that where applicable, the affected employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

NOTE: Under 5 CFR 752.404 (b)(2), if the agency is furloughing some, but not all, employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough. Agencies who anticipate furloughing some, but not all employees, should ensure the accuracy of established competitive levels in order to meet their obligations under this regulation. In general, the term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable (See 5 CFR 351.403(a)). Where bargaining unit employees are

concerned, additional procedural rights may be provided by their negotiated agreement.

**52. What about time frames for EEOC, MSPB, grievances etc.? These run X days from the day the action was effected. Will a period of furlough extend the time frames or not? Also what about time frames such as response to discovery, etc., established by MSPB and EEOC? For pending MSPB and EEOC cases where there will be a make-whole remedy, will the furlough be considered in back pay, overtime, etc.? What effect will this have on interim relief orders?**

Furloughs will not automatically extend time limits in these various proceedings. Thus, timely requests should be made to extend time limits in situations where the adjudicator has the authority to extend them. Decisions will likely be made on a case-by-case basis.

Parties to a collective bargaining agreement may, of course, agree to extend time limits in any agreement where those time frames are governed by the agreement and otherwise not outside the authority of the parties to control because they are established by an outside third party (e.g., the MSPB). Time limits for employees to file grievance under the DoD Administrative Grievance System shall be extended during any period of furlough.

Periods of furlough incurred by the employee, or which would have been incurred by the employee but for the employee's absence (e.g., due to removal for cause) should be taken into consideration in any make-whole remedy or interim relief order. In this regard, the Antideficiency Act, 32 U.S.C. 1341 *et. seq.*, prohibits federal personnel from being employed except in emergencies, unless otherwise authorized by law. In view of this prohibition, if the employee would not have been employed during the furlough period, the employee has no entitlement to pay during the furlough period.

**53. How should the decision letter be framed if the agency has not set a specific number of furlough days in the proposal?**

While it is desirable when possible to inform the affected employee of a specific number of days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible, if they choose to appeal.

**54. What if an employee did not report or was late reporting to work at the beginning of the shift after the furlough was over?**

If an employee fails to report for duty as directed, normal supervisory discretion applies.

**55. What affect does the furlough have on an employee who is currently serving a suspension? (Note: The employee's position is not designated as excepted):**

In most cases, agencies may avoid suspending an employee during a furlough period by waiting to suspend the employee until the furlough period is over, or where a decision has already been issued, by appropriately amending the decision. The Merit Systems Protection Board has held that an employee who is already in a non-duty, non-pay status (e.g., furlough status) at the time of an agency action suspending the employee, is not being placed into a non-duty, non-pay status, and therefore, is not receiving a "suspension". *Weaver v. Department of Agriculture*, 55 MSPB 569 (1992). In *Weaver*, the Board noted that 5 USC § 7501(2) defines a "suspension" as "...the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay". The Board the ruled that since the employee was already in a non-duty, non-pay status, (the employee was receiving Workers' Compensation benefits) at the time of the agency's action, he was not "placed" into that status by the agency and thereby deprived of his duties and pay. The Board decided that since the employee did not receive a "suspension", he was not entitled to appeal the action.

## **LABOR RELATIONS**

**56. What is an agency's obligation to bargain when it becomes necessary to furlough employees?**

A. The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. 7106 (a)(2)(A). However, the agency must bargain over the impact and implementation of its decision and over appropriate arrangements for employees adversely affected by the furlough, unless the matter of furloughs is already "**covered by**" the agreement. See, in this connection, 47 FLRA Nos. 96, 99 and 114, and other cases in which the Authority has applied its "**covered by**" doctrine to determine whether the agreement provisions relieve the agency of any duty to bargain on impact and implementation on this matter. If in doubt, prudence dictates that the agency give adequate notice and bargain on impact and implementation rather than run the risk of being ordered to pay back pay to furloughed employees as a remedy for committing a refusal-to-bargain unfair labor practice.

**57. What should the agency do about employees who were on 100% official time and at work on union representational business during the furlough?**

Unless employees who have been granted official time to represent the union are otherwise excepted from the furlough, they must be on furlough and will have no entitlement to official time during the furlough period.

**58. A union has proposed that management rotate the designation of “excepted from the furlough” among employees who are equally qualified. This minimizes the impact on all employees, especially if Congress does not provide pay for those furloughed. Is this negotiable?**

Yes. Management retains the right to determine which duties and responsibilities must be performed during the furlough and which employees are qualified to perform such duties and responsibilities. How these employees are selected from among those that are qualified, however, is negotiable. While the excepted designation is not negotiable, once it has been determined which positions are excepted, the determination of which among equally qualified employees should be designated excepted is negotiable.

**59. If rotation of the excepted designation is negotiable, do the parties have to agree? The burden on management for processing so many actions would be great.**

No. The parties must deal in good faith with each other, either in partnership or through collective bargaining. They are not required in either approach to reach agreement. Where agreement cannot be reached, the services of a neutral third party may be used. If the parties have not reached agreement before the furlough, then management has no choice but to proceed by implementing its last offer. Management should, to the maximum extent possible, continue to negotiate with the union during implementation. If the parties reach impasse and the matter goes to the Federal Service Impasses Panel, management must be prepared to show that the requirement to rotate employees would impose an undue burden on the agency.